NG MUN BEE & ORS. v. CHONG PIK SIN & ANOR.

[O.C.J. (Siti Norma Yaakob J.) April 23, 1984]

[Kuala Lumpur – Civil Suit No. P546 of 1979]

Damages – Fatal accident – Loss of consortium and services – Deceased a wife and mother.

In this case the first plaintiff is the widower of Gan Ching Thai (the deceased), who died when she was run down by a motor car driven by the first defendant on March 10, 1979. The second, third and fourth plaintiffs are the infant children of the first plaintiff with the deceased. The plaintiffs are claiming damages based on loss of consortium and loss of services. Liability has been agreed between the parties at 50:50 and the only issue before the court is on quantum for the claims for loss of consortium and loss of services.

Held: (1) for the claim of loss of consortium, $4,000 for this head of damage is fair and reasonable on 100% liability;

(2) (on 100% liability) the value of the first plaintiff's loss of services is $500 per month and for the pre-trial period of 58½ months, this loss amounted to 500 x 58½ = $29,250. For the post-trial period, loss of services is awarded at the same rate per month but limited to a period of three years based on the possibility of the first plaintiff's remarrying again – a figure of $16,339;

(3) loss of services suffered by the three children (on 100% liability): for the pre-trial period of 58½ months loss is calculated at $250 per month and the amount due is 58½ x 250 = $14,625. For the post trial period of 11 years worked on the basis of loss at $300 per month, the Annuity Table gives a figure of $29,903.

Cases referred to :

(1) *Bas Mini Muhibbah Sdn. Bhd.* v. *Abdullah bin Salim* [1983] 2 M.L.J. 405.

(2) *Chan Ah Fong & Ors.* v. *Goh Kim Dass* on Quantum in Accident Cases at page 41.

CIVIL SUIT.

David Tay Seow Hai for the plaintiffs.

S. Kanagasabapathi for the defendants.

Cur. Adv. Vult.

Siti Norma Yaakob J. : In this action the first plaintiff is the widower of Gan Ching Thai (the deceased), who died when she was run down by a motor car driven by the first defendant along Jalan Syed Putra, Kuala Lumpur on March 10, 1979. The second, third and fourth plaintiffs are the infant children of the first plaintiff with the deceased and together with their father, they bring this action, claiming pecuniary loss suffered, following the deceased's death. They are not claiming damages under section 7 of the Civil Law Ordinance 1956 but are claiming damages based on loss of consortium and loss of services.

Liability has been agreed between the parties at 50:50 and so is funeral expenses at $3,000 on 100% liability and the only issue before me was on quantum on the claims for loss of consortium and loss of services.

At the time of her death, the deceased was 31 years old and her husband, the first plaintiff was 35 and the three children were 7, 5 and 2. The deceased was a housewife and she cared, cooked and did all other household chores that were expected of her as a wife and mother. However, she had a daily help who did all the family's washing and mopping and cleaning the floors of the house. After her death, the first plaintiff left the three infant children in the care of his stepmother whom he refers to as his 'auntie' and during the first two years, he paid her $550 per month for their maintenance. Thereafter, he increased the monthly payments to $800 and explained that these monthly contributions came from the rentals of a shophouse he owns and he made the increment after the rental of the shophouse was raised from $550 to $800. Six years after his wife's death, the first plaintiff has not remarried and he testified that he had no intention of doing so.

For the claim of loss of consortium which is the right of one spouse to the company, assistance, affection and companionship of the other, both counsel agree that the amount to be awarded, following the trend in decided English cases, should be nominal. The most recent local case on this is *Bas Mini Muhibbah Sdn. Bhd.* v. *Abdullah bin Salim*,(1) a non-fatal accident case, where Abdul Razak J. confirmed an award of $3,000 made by a lower court for loss of consortium suffered by a husband when his wife was run down by a bus resulting in her left leg being amputated. Following the amputation, she developed a state of depression and her whole personality changed. She hated her husband and denied him sexual relations. In another earlier case of *Chan Ah Fong & Ors.* v. *Goh Kim*,(2) $3,250 was awarded by way of damages for loss of consortium to the husband of a deceased woman. Guided by this trend of awards, I consider $4,000 for this head of damage to be fair and reasonable on 100% liability.

I now come to the loss of services and for this head of damages, I had divided it into 2 parts:
(a) the loss suffered by the first plaintiff as a husband, and
(b) the loss suffered by the three infant children.

It is no easy task to quantify the first plaintiff's loss in this respect and since there has already been an award made for loss of consortium, loss of services must be confined generally to the first plaintiff's loss in the caring of his needs in the house such as the loss in the enjoyment of his wife's cooking and other wifely duties that are more or less taken for granted and for which there can be no substitute. Against this, I had not forgotten the fact that during her life time, the deceased had a daily help to assist her in her laundrying and cleaning of the house and although there does not appear to be any other woman in sight, I had also to consider the possibility of the first plaintiff, who is 40 years old, re-marrying again. Giving the best consideration that I can to the first plaintiff's loss, I place the value of such loss at $500 per month and for the pre-trial period of 58½ months, this loss amounted to 500 x 58½ = $29,250. For the post-trial period, I had also awarded loss of services at the same rate per month but limited to a period of 3 years based on the possibility of the first plaintiff's re-marrying again. For this future 3-year period, the Annuity Table gives a figure of $16,339 (to the nearest dollar).

Coming now to the loss of services suffered by the three infant children, it is not disputed that when their mother died in 1979, they were of tender ages, the youngest being only 2 years old then, and they needed to be looked after. The first plaintiff did not employ any servant to look after them but instead left them in the care and protection of their grandmother, and she has been taking care of them since. Although the first plaintiff had been contributing $550 to $800 per month for their maintenance, these amounts could not possibly represent the value of loss of services as regardless of whether their mother lived or died, the first plaintiff still had to provide for their maintenance and other necessities of life. Giving the best consideration I can, I awarded a sum of $250 per month as being a reasonable payment to be made to the grandmother of the three children who had been taking care of them gratuitously since the death of their mother with a further increase of $50 per month for the post-trial period. Having quantified the loss of services per month, I had also to consider the length of time that the children needed care and guidance. For this I decided that it should not go beyond the youngest child reaching the age of 18 as at that age, not only should he be able to fend for himself, he should also be able to count on his two elder sisters for guidance and moral support and until his 18th birthday, there would be a difference of 16 years and taking 1/3 away for contingency, I had given a multiplier of 11 years. So for the pre-trial period of 58½ months loss is calculated at $250 per month and the amount due is 58½ x 250 = $14,625. For the post-trial period of 11 years worked on the basis of loss at $300 per month, the Annuity Table gives a figure of $29,903.

As all the above sums have been assessed on 100% liability, I had accordingly entered judgment for the plaintiffs for half the sums assessed or agreed as liability had been apportioned between the parties at 50:50 together with the usual interests and costs.

Order accordingly.

Solicitors: *Murphy & Dunbar; R.K. Nathan & Co.*